

SENATE FILE NO. SF0149

Conservation easements.

Sponsored by: Senator(s) Nicholas, Job and Johnson and  
Representative(s) Berger, Brown and Hageman

A BILL

for

1 AN ACT relating to real property; providing for  
2 conservation easements as specified; providing for creation  
3 and conveyance of the easement as specified; providing  
4 definitions; providing for actions and validity; reserving  
5 rights of the state regarding eminent domain and taxing  
6 interests created; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 34-1-201 through 34-1-207 are created  
11 to read:

12

13

ARTICLE 2

14

UNIFORM CONSERVATION EASEMENT ACT

15

16

**34-1-201. Short title; definitions.**

1

2 (a) This article shall be known and may be cited as  
3 the "Uniform Conservation Easement Act".

4

5 (b) As used in this article, unless the context  
6 requires otherwise:

7

8 (i) "Conservation easement" means a  
9 nonpossessory interest of a holder in real property  
10 imposing limitations or affirmative obligations the  
11 purposes of which include retaining or protecting natural,  
12 scenic, or open space values of real property, assuring its  
13 availability for agricultural, forest, recreational or open  
14 space use, protecting natural resources, maintaining or  
15 enhancing air or water quality, or preserving the  
16 historical, architectural, archeological or cultural  
17 aspects of real property;

18

19 (ii) "Holder" means:

20

21 (A) A governmental body empowered to hold  
22 an interest in real property under the laws of this state  
23 or the United States; or

24

1           (B) A charitable corporation, charitable  
2 association or charitable trust, a primary purpose or power  
3 of which includes retaining or protecting the natural,  
4 scenic or open space values of real property, assuring the  
5 availability of real property for agricultural, forest,  
6 recreational or open space use, protecting natural  
7 resources, maintaining or enhancing air or water quality,  
8 or preserving the historical, architectural, archeological  
9 or cultural aspects of real property.

10  
11           (iii) "Third-party right of enforcement" means a  
12 right provided in a conservation easement to enforce any of  
13 its terms granted to a governmental body, charitable  
14 corporation, charitable association or charitable trust,  
15 which, although eligible to be a holder, is not a holder;

16  
17           (iv) "This act" means W.S. 34-1-201 through  
18 34-1-206.

19  
20           **34-1-202. Creation; conveyance; acceptance and**  
21 **duration.**

22  
23           (a) Except as otherwise provided in this article, a  
24 conservation easement may be created, conveyed, recorded,

1 assigned, released, modified, terminated or otherwise  
2 altered or affected in the same manner as other  
3 easements. The provisions of W.S. 34-1-141 shall apply to  
4 this article.

5

6 (b) No right or duty in favor of or against a holder  
7 and no right in favor of a person having a third-party  
8 right of enforcement arises under a conservation easement  
9 before its acceptance by the holder and a recordation of  
10 the acceptance.

11

12 (c) Except as provided by W.S. 34-1-203(b), a  
13 conservation easement is unlimited in duration unless the  
14 instrument creating the easement provides otherwise.

15

16 (d) An interest in real property and any interest in  
17 minerals including any leasehold interests are not impaired  
18 in any way by a conservation easement unless the owners of  
19 those interests consent to the conservation easement.

20

21 (e) This act shall not alter the law of Wyoming  
22 regarding the primacy of the mineral estate and any  
23 easement created hereunder shall not limit the right of a  
24 mineral owner or his lessee to reasonable use of the

1 surface for the purpose of mineral exploration and  
2 production unless the owners and lessees of the entire  
3 mineral estate are a party to the conservation easement or  
4 consent to the conservation easement.

5

6 **34-1-203. Judicial action; modification; termination.**

7

8 (a) An action affecting a conservation easement may  
9 be brought by:

10

11 (i) An owner of an interest in the real property  
12 burdened by the conservation easement;

13

14 (ii) A holder of the conservation easement;

15

16 (iii) A person having third-party rights of  
17 enforcement, as named in the instrument creating the  
18 conservation easement.

19

20 (b) This article shall not affect the power of a  
21 court to modify or terminate a conservation easement in  
22 accordance with the principles of law and equity.

23

24 **34-1-204. Validity.**

1

2 (a) A conservation easement is valid even though:

3

4 (i) It is not appurtenant to an interest in real  
5 property;

6

7 (ii) It can be or has been assigned to another  
8 holder;

9

10 (iii) It is not of a character that has been  
11 recognized traditionally at common law;

12

13 (iv) It imposes a negative burden;

14

15 (v) It imposes affirmative obligations upon the  
16 owner of an interest in the burdened property or upon the  
17 holder;

18

19 (vi) The benefit does not touch or concern the  
20 real property; or

21

22 (vii) There is no privity of estate or of  
23 contract.

24

1           **34-1-205. Applicability.**

2

3           (a) This article shall apply to any interest created  
4 after its effective date which complies with the  
5 requirements of this article, whether designated as a  
6 conservation easement or as a covenant, equitable  
7 servitude, restriction, easement or otherwise.

8

9           (b) This article shall apply to any interest created  
10 before its effective date if it would have been enforceable  
11 had it been created after the effective date of this  
12 article unless retroactive application contravenes the  
13 constitution or laws of this state or the United States.

14

15           (c) This article does not invalidate any interest  
16 whether designated as a conservation or preservation  
17 easement, a covenant, equitable servitude, restriction,  
18 easement or other designation that is enforceable under any  
19 other law of this state.

20

21           **34-1-206. Uniformity of application and construction.**

22

1 This article shall be applied and construed to effectuate  
2 its general purpose to make uniform the laws with respect  
3 to the subject of the article among the states enacting it.

4

5 **34-1-207. Eminent domain; taxation.**

6

7 (a) Conservation easements shall be subject to the  
8 state's power of eminent domain in the same manner as any  
9 other real property interest.

10

11 (b) The real property tax imposed upon real property  
12 subject to a conservation easement shall not be less than  
13 the amount of the ad valorem tax for the property had it  
14 been levied and assessed based upon the taxable value of  
15 agricultural land of similar productive use and value under  
16 W.S. 39-13-101(a)(iii) and 39-13-103(b)(x).

17

18 **Section 2.** This act is effective July 1, 2005.

19

20

(END)